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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

July 18, 2011

In the Matter of Acceleration of Broadband Deployment)	
Expanding the Reach and Reducing the Cost of Broadband)	WC Docket No. 11-59;
Deployment by Improving Policies Regarding Public)	FCC 11-51
Rights of Way and Wireless Facilities Siting)	

COMMENTS OF THE CITY OF WILSONVILLE, OREGON

The City of Wilsonville, Oregon, files these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. Through these comments, the City of Wilsonville seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices and charges.¹ The City of Wilsonville has developed considerable expertise applying its policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission will disrupt this process at substantial cost to local taxpayers and to the local economy. We believe that a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of local government’s considerable expertise on local land-use matters all point to the same conclusion: this is no place for federal regulation.

The City of Wilsonville has successfully managed its property to encourage deployment of several broadband providers to date. As a result, broadband service via phone carriers, cable providers and satellite services is available to 99% of the households and businesses in our jurisdiction. There is no evidence that our policies or charges with respect to placement of facilities in the rights-of-way or on City property have discouraged broadband deployment. Our

¹ We use the term “charges” to include both any cost recovery that is part of right-of-way and facility management (such as permitting fees), as well as other compensation we may receive from communications companies for use of the rights-of-way and other facilities consistent with state and local law.

community *welcomes* broadband deployment, and our policies allow us to work with any company willing to provide service. No company has cited our policies as a reason that it will not provide service. We believe our policies have helped to *avoid* problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. On the other hand, we also know that many entities seeking access to our rights-of-way and facilities would prefer to live without rules or regulations, to the great detriment of other users, abutting landowners, commuters, and the general taxpayer.

A recent review of broadband services advertised in the City of Wilsonville found nearly a dozen businesses that provide land-line phone, cable or satellite high-speed Internet services:

1. Charter Communications
2. CLEARWirelessInternet.com
3. Comcast Services
4. Cricket Broadband
5. Dish
6. Frontier Communications Corporation
7. HughesNet
8. Optimum Cablevision
9. Qwest Internet Service
10. Vonage
11. Wave Broadband - Oregon

In response to the NOI, City of Wilsonville provides the following information:

I. *Application Procedures, Forms, Substantive Requirements, and Charges.*

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.²

The City of Wilsonville applies the following right-of-way management and facility placement procedures. Utilities with franchises in Wilsonville are required to apply for a Utility Permit, in lieu of a right-of-way permit, which is readily available on the City's website at <http://www.ci.wilsonville.or.us/Modules/ShowDocument.aspx?documentid=950>. The one-page form is quite simple and easy to complete and lists the conditions of utility permitting.

² NOI 14

Additionally, Wilsonville Municipal Code is also readily available online at the City's website, <http://www.ci.wilsonville.or.us/Index.aspx?page=34>.

II. *Sources of Delays.*

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications³. In the City of Wilsonville, most applications are processed very quickly, and the City has not received complaints from utilities regarding the pace of processing broadband right-of-way use applications.

III. *Improvements.*

The Commission asks whether there are particular practices that can improve processing.⁴ The City of Wilsonville has advanced a number of practices that have improved the process. Permits may be downloaded online and submitted via email, as well as via fax or in-person. If an applicant has special needs or special issues needing resolution, City staff are available and responsive to assist.

IV. *Permitting Charges.*

The Commission seeks data "on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees." Specifically, the Commission asks commenters to identify various aspects, to which the city response follows:

- The type of facilities for which such charges are assessed:

Response: only those facilities located in the public right of way are assessed charges.

- How such charges are structured (e.g., per foot or percent of revenue in the case of rights of way fees):

Response: the City charges a right-of-way privilege tax, as allowed by state law, that is a flat 7% of gross revenues of basic, "dial-tone" land-line service to only customers located

³ *Id.*

⁴ NOI 14, 29.

in the City of Wilsonville. Gross revenues are reduced by expenses such as bad debt and exclude revenues derived from customer upgrades beyond “basic service” option.

- Whether the community is subject to comprehensive state franchising or rights-of way-laws:

Response: generally, the City is not currently subject to comprehensive state franchising or rights-of way-laws, other than through limits or caps set by state law and regulation.

- Whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions:

Response: The methodology of charges is published in advance and is designed primarily to recover both direct costs of impacts to the public right of way and indirect costs for management and inspection and to account financially for private utility’s access of use of the public right of way.

- The value of any in-kind contributions required for access or permit approval.

Response: The City of Wilsonville does not require in-kind contributions for access or permit approval.

The Commission furthers asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.⁵ In the City of Wilsonville, the franchise fee or right-of-way privilege tax is designed to provide the City, on behalf of the public several objectives:

1. Equitable “lease” compensation for the privilege of private, for-profit businesses using the public right of way;
2. Cost-recovery of the City for managing, permitting and inspecting private utility work in the public right of way. Note that inspections of private utility work in the public right of way is very important. For example, in the past the City has occasionally found that improper “locates” of other utilities had occurred, leading to damage to other utilities, including but not limited to flammable/explosive natural-gas lines, and possible endangerment to the

⁵ NOI 17.

health and safety of the public and damage to public or private property;

3. Cost-recovery for damages to the public right of way that involve repairs to public property such as roadways and sidewalks.

The utility franchise and privilege fees are managed through the City's general fund and therefore right-of-way management and repair charges do not take funds from the general fund that otherwise that support City-provided services to the public.

The table below shows the actual, estimated and budgeted amounts of City utility franchise and privilege fees of fiscal years 2006-07 through 2011-12, and the average amounts over these years. Telecommunication utility franchise and privilege fees compose an average of 41.1% of all City utility franchise and privilege fees collected. These are important revenues to the City for the monitoring, permitting and management of private utility use of the public right of way.

Utility franchise and privilege fees	Actual 2006-07	Actual 2008-09	Actual 2009-10	Est Actual 2010-11	Adopted 2011-12	Average of 5 years
Telecom fees	313,330	718,301	931,039	888,766	883,500	746,987
All other utility fees	1,648,020	1,771,693	1,776,268	1,864,000	1,934,000	1,798,796
TOTAL	1,961,350	2,489,994	2,707,307	2,752,766	2,817,500	2,545,783
Telecom fees as % of all other utility fees	19.0%	40.5%	52.4%	47.7%	45.7%	41.1%

Additionally, the telecommunication utility franchise and privilege fees compose a significant portion of the City's general fund revenue, averaging 7.3% of all general fund revenues over the recent five-year period.

General Fund and Telecom Fee %	Actual 2006-07	Actual 2008-09	Actual 2009-10	Est Actual 2010-11	Adopted 2011-12	Average of 5 years
Total City General Fund Revenue	9,064,551	9,761,448	10,322,123	10,599,885	10,794,250	10,108,451
Telecom fees as % of total revenue	3.5%	7.4%	9.0%	8.4%	8.2%	7.3%

V. Local Policy Objectives.

The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area.⁶

In the City of Wilsonville, municipal policies on utility franchise and privilege fees are designed in a nutshell to achieve the following public benefits:

- Facilitate the responsible deployment of services;
- Make the services broadly available;
- Ensure public health and safety;
- Avoid traffic disruption;
- Maintain and repair roadways;
- Prevent public disruption and damage to abutting property;
- Minimize accelerated deterioration to roads that accompanies street cuts;
- Satisfy aesthetic, environmental, or historic preservation concerns;
- Avoid damage to the property of others;
- Obtain fair compensation for use of public property

VI. *Possible Commission Actions.*

Finally, the Commission asks what actions the Commission might take in this area.⁷

As noted above, the City of Wilsonville strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic-development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would charges for use of the rights-of-way could have significant impacts on the community, and may actually make it infeasible to continue to maintain or provide important public services. *For example, the City of Wilsonville currently provides free Internet access at the Wilsonville Public Library that is supported by general fund revenues.* If the Commission feels compelled to act in

⁶ NOI 22

⁷ NOI 36

this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

CONCLUSION

The City of Wilsonville urges the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. As indicated above, in the City of Wilsonville, our policies and procedures are designed to protect important local interests, and have done so for many years. There is no evidence that the policies have impaired any company from providing broadband service here, and there are many reasons to believe that federal regulations would prove costly and disruptive to our community.

Respectfully submitted,

City of Wilsonville, Oregon

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